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The mining sector in Nigeria

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*This article is written by **Oladele Oladunjoye** (Senior Associate, [Kola Awodein & Co.](#)) and **Nicholas Okonkwo** (Associate, [Kola Awodein & Co.](#))*

Introduction

The mineral resources of a nation are integral to national economic development. According to the Nigerian Extractive Industries and Transparency Initiative (NEITI) Report, there are about 40 different kinds of solid minerals and precious metals in Nigeria begging to be exploited[1].

In 2008, the Minister of Solid Minerals Development (now called Mines and Steel Development) prioritized the development of seven solid minerals with strategic relevance to Nigeria's economy considering their availability in quantities that are sufficient to sustain mining operations for the long term. These minerals are coal, barytes, bitumen, gold, iron ore, lead/zinc, and limestone[2].

These resources create potential opportunities for national development. For example coal which is richly concentrated in eastern Nigeria could serve as fuel for power generation, thus reducing the power infrastructural deficit in the country. In addition, bitumen which is an essential component of asphalts can be used for the construction of roads.

It is common knowledge that Nigeria has over the years, majorly depended on crude oil to drive its economy; with the solid mineral industry being largely neglected. According to the Nigerian- National Bureau of Statistics, the Mining and Quarrying sector accounted for 9.12% growth to the Real GDP of the country in the fourth quarter of 2014 with coal mining and quarrying & other minerals leading the growth[3].

In view of the global decline in crude oil prices and its attendant impact on the country's earnings and reserves, efforts are being made to refocus on the nation's solid minerals considering the potentials of solid minerals industry becoming a viable alternative foreign exchange earner in Nigeria. According to Corporate Nigeria, the country is estimated to have a reserve of about 42 billion tonnes of bitumen, and 3 billion tonnes of iron ore, 10 million tonnes of lead and zinc, 7.5 million tonnes of barite and 700 million tonnes of bentonite[4].

Despite this, infrastructural deficits and insufficient capitalization remains a bane to the rejuvenation of the solid minerals industry in Nigeria.

This article discusses the regulatory framework of the Nigerian mining sector with a focus on mineral titles, incentives and other salient issues prospective investors must consider in participating in the sector. The authors have drawn on their experience in advising foreign investors who have invested in the Nigerian mining sector over the last few years.

Overview of the Mining Legal Framework

Mining is on the exclusive legislative list of the Constitution of Nigeria, thus bringing it within the sole regulatory ambit of the Federal Government of Nigeria. The core legislations applicable to the sector are the Nigerian Minerals and Mining Act of 2007, the Nigerian Minerals and Mining Regulations 2011, and the Guidelines on Mineral Titles Application 2014. Other relevant legislations regulating the industry include the Nuclear Safety and Radiation Protection Act Cap N142 LFN 2004, National Environmental (Mining and Processing of Coal, Ores and Industrial Minerals) Regulations (SI No 31 of 2009), Environmental Impact Assessment Act (Cap E12 LFN 2004), The Explosives Act and Explosives Regulations (Cap E 18 LFN 2004), Land Use Act 1978, and the Nigeria Extractive Industry Transparency Initiative Act (Cap N159 LFN 2004).

According to the Nigerian Minerals and Mining Act, the entire property in and control of all Mineral Resources in, under or upon any land in Nigeria, its contiguous continental shelf and all rivers, streams and water courses throughout Nigeria, any area covered by its territorial waters or constituency and the Exclusive Economic Zone^[5] is and shall be vested in the Government of the Federation for and on behalf of, the people of Nigeria.

The Nigerian mining sector is overseen by the Federal Ministry of Mines and Steel Development which is headed by the Minister of Mines and Steels (the Minister). The Ministry functions primarily through the Mines Inspectorate Department, Mines Environmental and Compliance Department, Mining Cadastre Office, the Artisanal, Small-scale Mining Department, and the Mineral Resources and Environmental Management Committees established in each state of the Federation.

Solid Minerals Titles in Nigeria

The Nigerian Minerals and Mining Act provides that the right to search for or exploit Mineral Resources shall be obtained through any of the under-listed mineral titles namely:

- **Reconnaissance Permit:** This is a non-exclusive right awarded to Nigerian citizens, companies incorporated in Nigeria or mining co-operatives for a period of one year renewable annually to search, obtain, and remove surface samples of mineral resources in small quantities on any land within the territory of Nigeria available for

mining purposes. This reconnaissance does not permit the holder to engage in drilling, excavation or other sub-surface technique.

- **Exploration Licence:** This is an exclusive right awarded to companies incorporated in Nigeria, a Mining Co-operative, or the holder of a Reconnaissance Permit over the subject area of the application, for a period of 3 years renewable twice for a further period of 2 years each (subject to meeting certain conditions) to conduct exploration of mineral resources, remove, export, and sell agreed samples. The right is given over an area of land not exceeding 200Km².[\[6\]](#)
- **Small – Scale Mining Lease:** This exclusive right is awarded to Nigerian citizens, companies incorporated in Nigeria, a Mining Co-operative, or the holder of an Exploration Licence over the subject area of the application to carry out small scale mining operations. This Lease is granted for a period of 5 years renewable for a further period of 5 years over an area of land not exceeding 3Km².[\[7\]](#)
- **Mining Lease:** This exclusive right is awarded to companies incorporated in Nigeria, or other legal entities that have demonstrated that a commercial quantity of mineral resources exists in the area of application and have fulfilled all the conditions in relations to an Exploration Licence over the subject area. A holder of this lease has the right among others to carry out exploration, market, sell and export mineral products resulting from the mining operations.
- This Lease is granted for a period of 25 years renewable every 24 years. The subject area of application shall be determined in relation to the ore body as defined in the feasibility study, in addition to an area required for the working of the deposit not exceeding 50Km².
- For the legal entity to be entitled to the grant of a mining lease, it must have employed a person who possesses adequate professional qualification and experience in mining to supervise the mining operations and must maintain the employ of such a qualified person during the duration of the lease to be able to continue operations, otherwise it shall cease operations until a suitably qualified person is available[\[8\]](#).
- **Quarry Lease:** This is an exclusive right awarded to Nigeria citizens, Mining co-operatives, Nigerian companies or persons extracting construction materials for works or structures of public interest. It is granted for a period of 5 years renewable upon expiration and shall be for an area not exceeding 5Km². It confers on its holders the right to conduct quarrying operations in land and waters over minerals that may also be lawfully extracted under a Mining Lease.
- **Water Use Permit:** This is an exclusive right to obtain and convey water and/ or occupy land for the purpose of conveyance of water granted to the holder of the Exploration Licence, Mining Lease or Quarrying Lease at the time the water right granted will be used; or an applicant of a Mining Lease, Small scale mining Lease or Quarry Lease for which the water right will be required to be used. This permit is granted over the same area of land awarded or to be awarded to the qualified applicants and remains valid for as long as the applicant's licence or lease remains valid[\[9\]](#).

Mineral titles are issued on a first come, first served basis. However, the Minister is empowered under the Act to determine areas where an exploration licence and a mining lease shall be granted based on an open and transparent competitive bidding process.

An applicant for a mineral title would be required inter alia, to submit to the Mining Cadastre office an application letter in triplicate indicating the minerals which it intends to explore or mine within the lease, duly completed application form, a pre-feasibility report, prospecting plan/reserve estimation, valid exploration licence, documentary evidence of technical capability and competence, consent from land owners/occupiers, evidence of payment of the appropriate fees, minerals to be exploited, evidence of sufficient working capital for the mining operations within the lease area, and a survey of the lease area.

In the event that the applicant fails to satisfy the Mining Cadastre Office with respect to providing evidence of technical capabilities and competence, and availability of sufficient working capital for the mining operation, the Mining Cadastre Office shall upon consultation with the Minister refuse the application.

Royalty

Minerals obtained in the course of exploration or mining operations are liable to the payment of royalty *ad valorem* ranging from 3% - 5% cutting across 52 solid minerals as provided in Schedule 4 of the Minerals and Mining Regulations 2011. However the Minister may grant a concession for the royalty payable on any mineral to be deferred for a number of years, subject to the approval of the Federal Executive Council (a body consisting of the President and his cabinet), as well as reduce or waive the royalty payable on minerals exported solely for the purpose of analysis or experiment or as a scientific specimen, not being in greater quantity than is reasonably necessary for the purpose.

Transferability of mineral title

With the exception of a Reconnaissance permit, mineral titles and permit are transferable under the Nigerian Minerals and Mining Act, subject to the approval of the Minister of Mines and Steels and the registration of the transfer with the Mining Cadastre Office. An application for an approval shall be made to the office of the Mining Cadastre Office.

However, where the transferor is an affiliate of the transferee, and the obligations of the affiliate are guaranteed by the transferor or by its holding company, the requirement for an approval may be dispensed with and the transferor may proceed to register the transfer with the Mining Cadastre Office. It is always prudent to procure that a due diligence be carried out on the transferor and the tenements to confirm the actual lease holder and that the leases are in good standing and available for transfer before consummating the transfer.

The priority of Interest and Compensation

Pursuant to the Land Use Act 1978 (LUA), all land in each state of the Federation is vested in the Governor of the state who holds same in trust for the indigenes. The LUA creates a leasehold relationship between the Governor and land occupiers, granting the latter a statutory right of occupancy over the said land. However, where land is required to be utilized in the interest of the public, the Governor of a state may pursuant to the LUA revoke the statutory right of occupancy already granted over the said land.

In accordance with s. 22 of the Nigerian Minerals and Mining Act, the use of land for mining operations amounts to an overriding public interest which may result in the Governor of the state revoking any prior right of occupancy in accordance with S. 28 of the LUA. A revocation made pursuant to S. 28 of the LUA shall entitle the occupier of the mineral title area to recover compensation from the government or the mineral title holder where the mineral title holder has been directed to do so by the Government.

However, in the event that a revocation is not granted and the community leases its land for an exploration or mining activity to be conducted on it, a mineral title holder will be liable to pay compensation for the surface rights to the owner or occupier of a land over which it has a right to mine and for any damages occasioned on the land, crop, economic tree, building or works as a result of the mining activities. This compensation is also extended to adjoining land owners or occupiers whose land or interest are injuriously affected by the exercise of the rights conferred by the licence or lease obtained by the mineral title holder.

The Minister may before granting a mineral title require the applicant to give security by depositing with the Government a prescribed sum or reimburse the Government for any compensation paid by the Federal Government to the occupier of land on which the lease or licence is given.

In addition, there is a prohibition of exploration or mining activities on areas considered to be sacred grounds, neither can any damage be done to a tree or any object of veneration within the community. Where an injury or damage is occasioned to a sacred area or revered tree, a fair and adequate compensation shall be made to persons or communities affected by the damage. Similarly in Australia, indigenous cultural heritage is protected by the Aboriginal Cultural Heritage Act 2003 (Qld) which provides that exploration and mining tenements must meet the mandated duty of care which requires that a person who conducts an activity must take all reasonable measure to ensure that the activity does not harm Aboriginal cultural heritage^[10]. Thus, it is clear that there is a germane need to preserve monumental areas in a society.

Structures for Participation

Foreign participation in the mining sector may take any of the following structures:

- i. An acquisition of a significant equity in an established Nigerian entity (the target) with an existing licence. This enables the foreign investor explore minerals under the existing licence of the target company, gain control of a production and distribution channel, as well as enjoy easy access to an established market.
- ii. Entering into a joint operating agreement with a local partner to invest in the mining sector within Nigeria. This may require the local partner to obtain the mineral title in its name and contract the exploitation operations to the foreign investor under a Technical Service Agreement. A joint venture agreement may also be entered into wherein a project vehicle is incorporated to execute the project. The project vehicle may then obtain the required licences and carry out the exploitation operations.
- iii. Incorporating a company in Nigeria through which they can invest in the sector. This *ab initio* gives the investor effective control of the investment.

Community Relations, Development & Rehabilitation

As part of the Federal Government measure to ensure that mining and exploration activities are conducted in an environmental and social responsible manner, a mineral title holder is required before commencing mining operations to submit an Environmental Impact Assessment statement to the Mines Environmental Compliance Department in respect of the Mineral operations to be conducted within the mining area, as well as submit an Environmental Protection and Rehabilitation Programme.

The Environmental Protection and Rehabilitation Programme must provide for rehabilitations and reclamation actions, an estimate of the cost and a timetable for the duration it will take to restore the mineral title area back to a safe environmental state suitable for future economic development or recreational uses. To guarantee the rehabilitation of the mineral title area, the Mineral Title holder will be required to make such prescribed contributions to an Environmental Protection and Rehabilitation Fund.

At the completion of the mining or exploration activities on the mineral title area, the mineral title holder is required to fill up any shafts, wells, holes or trenches among other activities to ensure that the mineral title area is reverted to a state suitable for future economic activities.

In addition to this, prior to the commencement of any lease operations, a Community Development Agreement must be consummated with the host community detailing the social and economic contributions of the project to the host community. These contributions shall be directed in the areas of educational scholarships, apprenticeship, technical training, employment of indigenes, support for infrastructural development, improved health care, support to SME's, and agricultural improvements. The Community development Agreement shall be subject to review every 5 years.

Incentives available to investors under the Nigerian Minerals and Mining Act

An investor participating in the mineral and quarrying sector shall be entitled to the following incentives:

- A capital allowance of 95% of its Qualifying Capital Expenditure incurred in the year of investment.
- Losses incurred are deductible from the assessable profits of the first year of assessment after that in which the loss was incurred, and in so far as it cannot be so made from such amounts of such assessable profits of the next assessment up to a limit of four years after which period any unrelieved loss shall become lapse
- Exemption from payment of customs and import duties in respect of plant, machinery, equipment and accessories imported solely for mining activities. The plant, machinery and equipment and accessories may be disposed of by the holder of Mineral title upon the full payment of customs and imports duties
- Although the Minerals and Mining Act provides that a tax holiday (pioneer status) for an initial period of 3 years renewable for a further period of 2 years shall be granted to investors, the Companies Income Tax Act does not make provisions for a renewal of tax exemption for companies enjoying the benefit of pioneer status
- Exporters of mineral products may be permitted the retention of part of its foreign exchange earning in a domiciliary account for acquiring spare parts and other mining inputs
- Free transferability of foreign currency through the Central Bank of Nigeria (CBN) for the servicing of a certified foreign loan and the remittance of foreign capital in the event of sale or liquidation of the business (this incentive is also available for all other foreign investors in Nigeria)
- Personal remittance quota for expatriate personnel free from any tax imposed by any enactment for the transfer of external currency out of Nigeria
- Actual amount incurred out of reserves made for environmental protection, mine rehabilitation, reclamation and mine closure cost shall be tax deductible, subject to certification by an independent qualified person

Challenges

Since the minimum share capital of Nigeria Banks was increased from ₦2 Billion to ₦25 Billion[11] in 2004, Nigerian banks have financed large ticket transactions especially within the upstream oil sector particularly via syndications. There was a flurry of activity in this regard during the recent divestment of the oil majors (e.g. Shell, Conocophillips) from some of their Oil Mining Leases.

However, Nigerian banks have historically been averse to financing the mining industry due to a myriad of reasons including a lack of understanding of the technicalities of the sector, unwillingness to deploy long term funding, and non-availability of bankable feasibility studies which are carried out in accordance with the Joint Ore Reserve Committee specifications[12]. As a result of this there has been a heavy reliance on foreign debt to finance the industry despite the capacity of Nigerian banks to participate in this industry.

Security challenges has also affected foreign investments in the sector. The Boko Haram insurgency predominantly in the Northern region of Nigeria has significantly

affected investments in the region. According to World Investment Report (WIR) of the United Nations Conference on Trade and Development (UNCTAD), the domestic economy lost about ₦1.33 trillion Foreign Direct Investment (FDI), owing to terrorists' activities.[13]

Interestingly, several mineral deposits such as gold, tin ore, and uranium are found in the northern region of Nigeria. It is worthy of note that the Nigerian security forces have successfully reclaimed vast territories from the insurgent's control with the government promising to fully eradicate Boko Haram by December 2015. Related to this is the threat caused by illegal miners who, with their knowledge of the local terrain may pose security challenges to legitimate mining activities.

In addition, there is a huge infrastructural deficit in the country. Dilapidated roads, inefficient rail way transport system, epileptic power supply or the lack of it in some rural parts of the country are all infrastructural challenges which are a bane to the development of the sector. Thus, a potential investor would be required to factor the cost of providing alternatives to power, and a means of ensuring safe transportation of minerals produced to the port of export in deciding whether to invest in the sector.

Conclusion

Nigeria operates a federal system of government consisting of a Federal, States, and Local Governments. As earlier mentioned, mining is on the exclusive legislative list just like Petroleum Resources. However, stakeholders have over the years argued whether resources located within a state should be vested in and managed by the state in order to maximize the resources. For example in Australia, a leading mining country, mineral and petroleum resources are publicly owned and regulated by the federal and state governments. It is thus arguable that in order for resources which have been significantly under-exploited in Nigeria to be fully exploited to foster an inclusive economic growth, state governments should be vested with the right to deal with the resource which will require a constitutional amendment with its attendant intricacies.

Furthermore, considering that most mineral resources are found in the interior parts of Nigeria, there is a germane need to develop Nigeria's railway system to facilitate transportation of solid mineral resources to the port of export.

Undoubtedly, the potentials for mining in Nigeria remain largely untapped thus creating huge opportunities for investors who are able to navigate the sector with the right set of advisers.

[1] www.vanguardngr.com/2015/06/neglect-of-solid-minerals-why-nigeria-remains-poor/ (Accessed on: 24 October, 2015)

- [2] <http://www.nigerianminers.org/sites/default/files/Mining-Mineral-Act.pdf> (Accessed on: 03 November, 2015)
- [3] Nigeria Gross Domestic Product Report Q4 2014, *Mining and Quarrying*, page 5, paras 3 and 5. National Bureau of Statistic Available at: www.nigerianstat.gov.ng/nbslibrary/economic-statistics/gross-domestic-product (Accessed on: November 2, 2015)
- [4] <http://www.corporate-nigeria.com/assets/pdf/2010/cn-2010-solid-minerals.pdf>(Accessed on: November 2, 2015)
- [5] Exclusive Economic Zone means the Exclusive Zone of Nigeria as defined in the Exclusive Economic Zone Act, Cap E17 Laws of Federation of Nigeria
- [6] Clause 2.2 of the Guidelines on Mineral Titles Application, 2014
- [7] Clause 2.5 of the Guidelines on Mineral Titles Application, 2014;
- [8] S. 48 & S. 73 of the Nigerian Minerals and Mining Act
- [9] Clause 2.6 of the Guidelines on Mineral Titles Application 2014;
- [10] Carolyn Boyle (2012): *Minerals and Mining: A Practical Global Guide*. Jessica Davies and Barry Irwin (Allen & Overy) (Australia Contribution) Published by Sian O'Neil Globe Law and Business Publishing Ltd (page 49, para 11.2)
- [11] Between about 10 Million dollars to 125 Million dollars
- [12] (<http://www.premiumtimesng.com/business/manufacturing/185680-dangote-6-others-set-for-gold-mining-other-minerals-in-nigeria.html>) (Accessed on: November 3, 2015)
- [13] <http://transparencynigeria.com/news-categories/89-national-security/6431-terrorism-counting-the-costs-of-boko-haram-report.html>

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